

UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA  
BEFORE THE HONORABLE PEGGY A. LEEN, MAGISTRATE JUDGE

RIMINI STREET, INC., a Nevada :  
corporation, :  
Plaintiff, : No. 2:14-cv-01699-LRH-PAL  
vs. :  
ORACLE INTERNATIONAL :  
CORPORATION, a California :  
corporation, :  
Defendant. :  
ORACLE AMERICA INC., a :  
Delaware corporation, et al., :  
Counterclaimants, :  
v. :  
RIMINI STREET, INC., a Nevada :  
corporation, et al., :  
Counterdefendants. :

TRANSCRIPT OF STATUS CONFERENCE

April 5, 2016

Las Vegas, Nevada

FTR No. 3B/20160405 @ 9:05 a.m.

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1 LAS VEGAS, NEVADA, APRIL 5, 2016, 9:05 A.M.

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3 P R O C E E D I N G S

4

5 THE COURT: Good morning. Please be seated.

6 COURTROOM ADMINISTRATOR: Your Honor, we are now  
7 calling the status conference in the matter of Rimini  
8 Street, Inc., versus Oracle International Corporation. The  
9 case number is 2:14-cv-1699-LRH-PAL.

10 Beginning with plaintiff's counsel, Counsel,  
11 please state your names for the record.

12 MR. ALLEN: Good morning, Your Honor. West  
13 Allen, from Howard and Howard, on behalf of Rimini Street.

14 Also with me this morning are Mr. Peter Strand,  
15 from Shook, Hardy & Bacon, and Ryan Dykal, from Shook,  
16 Hardy & Bacon. And Mr. John Ryan is here, counsel from  
17 Rimini Street.

18 MR. HIXSON: Good morning, Your Honor. Tom  
19 Hixson and John Polito, with Morgan Lewis, for Oracle.

20 MR. RICHARDSON: Good morning, Your Honor. Beko  
21 Richardson, Boies, Schiller & Flexner, on behalf of Oracle.

22 MR. POCKER: Richard Pocker on behalf of Oracle,  
23 Your Honor.

24 THE COURT: All right, folks. I have read your  
25 joint status report and supporting exhibits and

1       declarations and the like.

2                   Would Rimini like to bring me up to speed to any  
3       ongoing developments on discovery since we last met and  
4       since the status report was entered?

5                   MR. STRAND:   Sure, Your Honor.   Be happy to do  
6       that.

7                   How are you this morning?

8                   THE COURT:   Very good, thank you, Mr. Strand.  
9       And you?

10                  MR. STRAND:   I promised fewer documents, but it  
11       seems to help if we have a score sheet.   So let me hand  
12       that up, if I could real quick.

13                  THE COURT:   A score sheet is fine.   But at the  
14       end of the day, the game clock is going to run out --

15                  MR. STRAND:   Oh, well, Your Honor --

16                  THE COURT:   -- so let's talk about when we're  
17       going to get there.

18                  MR. STRAND:   Yes, ma'am.   And that's -- we're  
19       prepared to do that this morning.

20                  THE COURT:   Okay.

21                  MR. STRAND:   Let me run through the score sheet  
22       real quick if you want.

23                         Since we last were here, we have produced 29  
24       additional KDP data environments.   That's what we talked  
25       about back in January and February.   We're now to a total

1 of 80 of those.

2 We produced 77 additional local preserved  
3 environments. We're up to 424 of those.

4 The other things are basically complete. I  
5 won't take a lot of time on that. The KDP data for archive  
6 documents, we are in the process -- I don't know if we did  
7 yesterday late or we are today or tomorrow, going to  
8 produce 100 plus KDP data for archived documents maintained  
9 by Rimini. So that's moving forward.

10 If you look with me at the second page, Your  
11 Honor, this is the client environments. This is what we've  
12 been focusing on for the last 60 days or so, or 90 days.

13 As of today there are 215 total. There was an  
14 adjustment of two. We have been authorized -- the Oracle  
15 subpoena process has spurred some clients to get with the  
16 program, I think is the legal term.

17 THE COURT: Predictably, yes.

18 MR. STRAND: 149 of them have seen the light and  
19 have authorized us to produce the documents.

20 As I indicated just a moment ago, we have  
21 produced KDP data for 80 of those, and 67 are this process.  
22 There are 44 who have refused authorization and 22  
23 remaining.

24 As of this morning, I checked -- we are shifting  
25 to another phase here, Your Honor. And this is -- talking

1 about getting it done, the most time-consuming thing right  
2 now in the case, as Your Honor I think is aware, is the  
3 production of the various KDP data for the archive  
4 documents, the environments that we've been working on.

5 At this point we're beginning to shift. We have  
6 basically exhausted all of the work that we can do for the  
7 clients who will volunteer. And as of today, I counted,  
8 there are 248 subpoenas that Oracle has issued -- has  
9 issued that are outstanding to Rimini clients.

10 As you might well imagine, when those clients  
11 are subpoenaed, many of them have called us and said, "Hey,  
12 what's going on? Can you help us?"

13 A few of them, about 25 or so, have been  
14 subpoenaed after they provided the KDP data. So there was  
15 a little bit of concern and confusion there.

16 So as we enter this next phase, we've basically  
17 done what we can do on the voluntary side of the KDP data  
18 project.

19 We are prepared to continue to assist our  
20 clients in getting the materials produced that Oracle wants  
21 to those subpoenas. But we'd like a little guidance from  
22 Oracle and/or the Court today so that we don't come back  
23 here with unnecessary fights.

24 The first thing is, I think it may be a stop.  
25 If we get these duplicate subpoenas, if we produce KDP data

1 and the next week they get a subpoena, as they did the 25  
2 instances, we get very unhappy clients, and it takes them a  
3 while -- it takes us a while to talk them off the ledge.

4 If we get subpoenas going to clients and they --  
5 they call us frequently, "What do they want?" "What are we  
6 going to do?" "How are we going to do it?"

7 Point one. We are happy to assist in that  
8 process. And we have been. Oracle has asked us to assist  
9 in certain instances, and we have assisted.

10 I believe that the most effective way going  
11 forward to get that very large process completed would be  
12 the following:

13 One, we work together to make sure we don't get  
14 duplication of effort, as we have, so that if something's  
15 produced once we don't produce it more than once or we  
16 don't get more than one request for it, which I think is  
17 reasonable; and, two, if we can get a punch list -- as you  
18 might imagine, it's a fairly broad subpoena. I don't want  
19 to argue about the terms of it. It's fairly broad.

20 We have now begun to develop -- at least we  
21 understand some clients, for example, like H&R Block have  
22 come up with a list of what they've produced to Oracle that  
23 satisfied Oracle.

24 Logically and ideally, what we'd like is a punch  
25 list from Oracle, pretty specific, as to, if you get this

1 from your client, we are happy, we're done. So that we  
2 don't come back here every month fighting about little  
3 knits and picks.

4 So our view is, Your Honor, that we're  
5 essentially done with the voluntary portion of the KDP  
6 product that -- the voluntary portion; i.e., the clients  
7 that will volunteer, we're now into the subpoena phase,  
8 we'll help with it. That's the KDP world.

9 In addition to that, Your Honor, we're working  
10 forward on the technology-assisted research, TAR, process.  
11 We're working that through. I think there's going to be  
12 some initial productions here in the very near future by  
13 both sides.

14 Obviously we know where you are if we need -- if  
15 we have problems with that. But thus far that's worked out  
16 fairly well. I don't know where we're going to go with  
17 that.

18 We've produced most everything else that we  
19 think Oracle wants or needs. I'm sure there'll be  
20 additional things that they'll want. We'll supplement as  
21 we move forward.

22 They've requested 30(b)(6) depositions. We  
23 are -- they are -- again, without characterizing, I don't  
24 want to get into a fight. They're very broad. They're  
25 very comprehensive. They're very detailed.

1           We have begun the process of interviewing people  
2           to find the folks that know the information that we need  
3           and folks that can testify to that information so that we  
4           don't waste a lot of time with those.

5           So in the nutshell, Your Honor, I believe that's  
6           everything. We can -- and Mr. Dykal is here if you want to  
7           do a deep dive on anything. But that's the 10,000-foot  
8           level.

9           Do you have any questions that I can answer?

10          THE COURT: No. Let me hear from opposing  
11          counsel on the same type of overview from your perspective,  
12          please.

13          MR. HIXSON: Sure. Thank you, Your Honor.

14          THE COURT: Mr. Hixson for the record.

15          MR. HIXSON: Again, this is -- as has now become  
16          the practice, we get a status update at the status  
17          conference with new information not contained in the  
18          statement, which is frustrating for us.

19          But in any event, we are pleased to hear that  
20          our subpoenas are spurring Rimini's customers to cooperate  
21          with the KDP data collection process. That seems to result  
22          in efficiency.

23          Rimini has said that they are just about done  
24          with the voluntary KDP portion of their production. But if  
25          you look at the handouts, that appears not to be the case.

1                   On the second page Mr. Strand indicated that as  
2                   of April 5 there were a total of 215 environments at issue.  
3                   Authorization was refused as to 44. They've produced 80.

4                   My math isn't perfect, but it looks like they're  
5                   halfway there with respect to the environment production  
6                   for KDP data, which is not close to done.

7                   Turning to the first page, where they refer to  
8                   KDP data for archived documents, there's a download  
9                   archives, none of those have been produced. In the  
10                  quantity column there are zero, and that's consistent with  
11                  our understanding, none have been produced to us.

12                  So there still is a long way to go. And I don't  
13                  think we're -- we're halfway through the environments part  
14                  and the downloads --

15                  THE COURT: And I just heard Mr. Strand say that  
16                  they expect to produce approximately a hundred of those to  
17                  you this week.

18                  MR. HIXSON: I did hear that he said that they  
19                  expected to do that. We will take a look when we get them.

20                  Those, if I understood him correctly, were going  
21                  to be archives from Rimini's own systems rather than from  
22                  the customer systems or the cloud systems which have -- and  
23                  those, of course, have been the more time-consuming ones  
24                  for Rimini to produce.

25                  So we will welcome the KDP archives from their

1 systems. But I understood the other ones may take more  
2 time from them. In the event that's now beginning. So --

3 THE COURT: So let's move to how we can be as  
4 efficient as possible in obtaining the client data that you  
5 want without duplicating effort. Because they're willing  
6 to keep working with you. And your subpoenas are having  
7 the therapeutic effect that it was expected.

8 But I understand their frustration and the  
9 client's frustration in not wanting to be in the position  
10 of being in the process of voluntarily producing only to  
11 get a subpoena.

12 MR. HIXSON: Oh, of course. And we certainly  
13 don't intend for our subpoenas to duplicate that. There's  
14 only one item on the subpoena where there's potential  
15 duplication where we ask the customer for copies of their  
16 environment and the download archives.

17 And that's why we include the cover letter that  
18 Your Honor saw at the last status conference, where we tell  
19 them that if they cooperate with Rimini in producing the  
20 KDP data for the environments and the archives, then they  
21 may not need to produce the environment to us.

22 And I think that's the sentence in the cover  
23 letter that spurs the customers to reach out to Rimini and  
24 cooperate with them.

25 We've actually had a couple of customers that

1 says, "What is this KDP process you're talking about? We  
2 haven't heard about it."

3 And so then we emailed Rimini and we said, "When  
4 customers ask us, we want to put them in touch with you."

5 And so they gave us the names to put them in  
6 contact with.

7 And so I think that will help address any  
8 potential duplication.

9 Other than that one item, our subpoenas ask for  
10 other documents from the customer. They're not limited to  
11 the environments, the archives. Those are the customers'  
12 own documents. We're subpoenaing a third party --

13 THE COURT: Correct.

14 MR. HIXSON: -- for their documents.

15 THE COURT: But I --

16 MR. HIXSON: They're not Rimini's.

17 THE COURT: -- also understand Mr. Strand's  
18 point about if you're satisfied with a category of  
19 productions from a client like H&R Block, are you going to  
20 be satisfied with the same productions from the other  
21 clients?

22 MR. HIXSON: From -- oh, from Rimini Street?

23 THE COURT: Of Rimini Street's clients. In  
24 other words, can they go back to their clients and say, "If  
25 you do what you did -- if you do what H&R Block did, Oracle

1 is going to regard you in compliance"? Yes or no?

2 MR. HIXSON: That depends. A lot of times we  
3 say we're satisfied that their clients say, "We have A, B,  
4 and C, and we don't have D, E, and F. We'll give you what  
5 we have."

6 And when a customer says that to us, we have to  
7 say, "That's all you can do."

8 But that doesn't mean if another client has D,  
9 E, and F -- we do work with each of these customers when we  
10 subpoena them and in very much their description of what  
11 they have and are able to give us without going through  
12 extraordinary efforts.

13 THE COURT: Drives the process.

14 MR. HIXSON: Absolutely drives the process.

15 And so -- and so I think that the efficient way  
16 to proceed is for Rimini to continue working with customers  
17 to collect the KDP data and for us to continue to make  
18 clear to customers that if they cooperate in that process  
19 then they may not need to produce those environments or  
20 archives to us.

21 And then with respect to other documents that  
22 are not part of what Rimini is gathering, we meet and  
23 confer with the customers and obtain what they're  
24 reasonably able to provide to us. But we'd like to keep  
25 that moving forward. And we think that is efficient.

1 MR. STRAND: Your Honor, one follow-up thought.

2 THE COURT: Yes, Mr. Strand.

3 MR. STRAND: The H -- there is an H and R  
4 process. And Mr. Dykal is familiar with it. He can give  
5 it to you.

6 Here's where we reach the inefficiency. Oracle  
7 wants something, and they know what they want. And that's  
8 fine.

9 The client comes to us and say, "We want to get  
10 what Oracle wants." We don't know and are hesitant to  
11 predict what Oracle wants because we don't want to be in  
12 the position of being accused of having --

13 THE COURT: That's correct.

14 MR. STRAND: -- construed.

15 THE COURT: And so the process that Mr. Hixson  
16 describes is perfectly appropriate, to have the client talk  
17 directly with Oracle so that you're not put in the middle  
18 of --

19 MR. STRAND: No.

20 THE COURT: -- mistranslating and putting your  
21 wrench in the process.

22 MR. STRAND: Right. For us, though, it's also  
23 moving target for us because we have daily -- multiple  
24 daily calls with clients.

25 If we could get a better idea -- we understand

1 if they want A, B, C, D, and F, we just don't know what A,  
2 B, D, E, and F are in every situation. And you can't get  
3 blood from a turnip. We understand that too.

4 But if we could get a little more clarity,  
5 distilling down from Oracle what it is they want, it will  
6 assist us in talking to the client so that we're not  
7 talking past each other with Oracle.

8 MR. DYKAL: It might help if I put a little more  
9 concrete --

10 THE COURT: Mr. Dykal --

11 MR. DYKAL: -- on it.

12 THE COURT: -- for the record.

13 MR. DYKAL: So Oracle's subpoenas request  
14 communications with Rimini, all sorts of things like this.

15 My understanding is Oracle agreed with H&R Block  
16 to pick two custodians from H&R Block and run a certain set  
17 of keywords. And H&R Block said, "That's fine. We just  
18 don't know -- do you want us to search our whole company?  
19 What do you want?"

20 So they said, "Give us your primary technical  
21 contact with Rimini and your primary business contact with  
22 Rimini."

23 And then they negotiated a limited set of search  
24 words to run against their email. And they said that that  
25 should satisfy them.

1                   At least that's my understanding from speaking  
2                   to H&R Block counsel.

3                   So that seems like a reasonable process to us.  
4                   And then they also produced the environments or the KDP and  
5                   the contract documents.

6                   THE COURT: My observation is there's no reason  
7                   for you to be in the middle of that for strict -- for data  
8                   that only the client has because the discussion between  
9                   Oracle and the client should flesh out what is most  
10                  reasonable in each individual case as opposed to -- and I  
11                  understand Mr. Hixson's point, that if the client says  
12                  they -- "This is what we have, this is what we don't have,  
13                  these are the people that are involved in this, and these  
14                  are the" -- you know, "Is this good enough?"

15                  That seems to me to be the most efficacious way  
16                  of doing it without interjecting you into the process,  
17                  which --

18                  MR. DYKAL: Sure. No.

19                  THE COURT: -- then creates the potential for  
20                  confusion.

21                  MR. DYKAL: I agree. We're not trying to  
22                  interject ourselves in the process. We're just -- clients  
23                  ask us what is going on.

24                  We say, "Talk to Oracle."

25                  And they're, like, "Is a starting point what has

1 Oracle been satisfied with in the past?"

2 And we tell them, "Maybe this is an idea, and  
3 then you'd have to talk to Oracle, would that be  
4 acceptable?"

5 MR. STRAND: Here's what I suggest, Your Honor.  
6 We'll work it out with counsel, and we'll follow their lead  
7 to stay out of it.

8 THE COURT: You know I really can't give you an  
9 advisory opinion on discussions that I haven't heard.

10 MR. STRAND: Correct.

11 THE COURT: And I'm not going to.

12 MR. STRAND: Yeah. We'll try to work over the  
13 course of the next month to make that more efficient.

14 I think we've aired the concern. We can talk  
15 with them and try to figure out something that will work  
16 and not get down into the extreme minutia with you.

17 THE COURT: You're both the pros from Dover.  
18 You can work it out.

19 MR. STRAND: Yes, Your Honor. Although I don't  
20 think I've ever been in Dover. But thank you.

21 THE COURT: All right. Let's move now to the  
22 areas that are in dispute which require the Court's  
23 intervention.

24 You have some issues. Oracle's seeking a  
25 protective order. Rimini is seeking a motion to compel,

1 which is somewhat the flip side of the equation.

2 So let me hear first from Rimini concerning its  
3 discovery requests that are directed towards Spinnaker  
4 and -- the name just went out of my head, CedarCrestone,  
5 now Sierra --

6 MR. STRAND: Yes. And, Your Honor, with your  
7 leave I'll refer to them as CedarCrestone. It's just a  
8 force of habit.

9 THE COURT: Okay.

10 MR. STRAND: As the Court properly notes, the  
11 motions overlap. And so what I want to do is deal with  
12 them kind of together because I don't think there's any  
13 reason to take them completely separately.

14 I'm going to speak first to the motion for  
15 protective order just generally and then follow up with our  
16 motion to compel.

17 Your Honor, in looking at the joint submission  
18 and thinking about this a little bit, I think Your Honor --  
19 and you probably already figured out, but I think there are  
20 four questions that are before us today. And I want to  
21 take each of those in order.

22 The first question is, on what grounds does  
23 Oracle oppose production of the requested information and  
24 on what grounds does Rimini seek production of that  
25 information?

1           And that sounds simplistic, but it's actually  
2           not. I think it goes to the core of what the dispute is.

3           Oracle, if you look at the joint submission on,  
4           for example, pages 12, 18, and 19, refers to the issues  
5           before the Court primarily as ones of liability for  
6           infringement, the liability side of the case.

7           The requests and the subpoenas are in fact  
8           focused on causation and damages. That's where they go.  
9           That's where they're relevant. That's why we believe we're  
10          entitled to that information.

11          So if we look at the -- if we look at those  
12          requests from the position of damages and causation in this  
13          case, it frames the issues properly, and I think it will be  
14          easier for the Court to resolve them so that regardless of  
15          whether they relate to liability -- we think they do, but  
16          it's just not worth arguing that because they so clearly  
17          relate to issues of causation and damages.

18          With that framing of the issue, Your Honor,  
19          let's look at the second question I think the Court has to  
20          face.

21          Recognizing that under Rule 26(b)(1) information  
22          within the scope of discovery need not be admissible in  
23          evidence to be discoverable. And that's a quote from the  
24          rule.

25          Is the information that Rimini seeks relevant to

1 Rimini's defenses and claims in the case? And primarily  
2 it's Rimini's defenses and therefore properly the subject  
3 of discovery under Rule 26(b)(1).

4 Again, Your Honor, I think there are two  
5 foundational questions. And I don't want to overreach on  
6 the Court by any way -- any means. But let's just get  
7 Rule 26 in front of us because that's what this whole  
8 discussion is about.

9 So let's first look at Rule 26 that we are --  
10 they're in the second or the -- after the colon on the  
11 third line down. Parties may obtain discovery regarding  
12 any non-privileged matter that is relevant to any party's

13 I want to talk about relevant to any claim or  
14 defense.

15 Your Honor, in the -- in the submission  
16 materials we quoted from the *Krause* case, which is an  
17 opinion by Magistrate Judge Hoffman in 2014. And in that  
18 opinion he states, As the Supreme Court reiterated in  
19 *Oppenheimer Fund versus Sanders*, relevancy is, quote,  
20 construed broadly to encompass any matter that bears on or  
21 that reasonably could lead to other matter that could bear  
22 on any issue that is or may be in the case.

23 So that's a statement by the United States  
24 Supreme Court under the breadth of relevance.

25 The rules and the proportionality have changed

1 nothing about what's relevant in discovery. So I think we  
2 need to focus on what's relevant to discovery. Not what's  
3 admissible but what's relevant due to discovery.

4 The second --

5 THE COURT: The question here is whether you're  
6 going to get it, not whether it's relevant.

7 MR. STRAND: Well, but I --

8 THE COURT: I --

9 MR. STRAND: -- think in order to get it, it has  
10 to be relevant. Because obviously if it's not relevant, I  
11 wouldn't be asking for it.

12 Okay. The second question then is must it be  
13 admissible in evidence. And I think we look at the last  
14 line of Rule 26(b)(1), information within this scope of  
15 discovery need not be admissible in evidence to be  
16 discoverable.

17 And I think part of the problem with the parties  
18 right now is Rimini is talking about relevance for purposes  
19 of discovery, and Oracle is talking about relevance for  
20 purposes of admissibility.

21 And I'm not here arguing about relevance for  
22 purposes of admissibility. I just want to get it. And why  
23 don't I proceed to tell you why we should get it.

24 The relevant -- I want to deal with the two  
25 separate subpoenas and the RFP to Crestone as separately

1 with Spinnaker. Because there are slightly different  
2 issues afield -- at play in both of those.

3 If we look at CedarCrestone, that's our RFP 37,  
4 and the opposition to the motion for protection which  
5 Oracle seeks. Then I'll look at Spinnaker as I said.

6 So let's place the issue in context first, just  
7 so we understand what we're talking about when we talk  
8 about CedarCrestone. Because it's had a long history in  
9 this litigation.

10 As you'll recall, Oracle issued a subpoena to --  
11 both parties issued subpoenas to CedarCrestone in case 1.  
12 And as the pleadings show -- or as the submission shows,  
13 the subpoena that was issued in case 1 is quite a bit  
14 broader than the subpoena that Rimini has issued in this  
15 case.

16 Importantly, CedarCrestone did not resist that  
17 broader subpoena in case 1.

18 In case 1, in December of 2011, CedarCrestone  
19 was deposed.

20 September the following year Oracle sued  
21 CedarCrestone.

22 As we point out, Oracle sued CedarCrestone in  
23 that case on 19 copyrights. 13 of those same copyrights  
24 are asserted against Rimini in this case. So there's big  
25 overlap in the two cases.

1                   In August of 2013, CedarCrestone and Oracle  
2 settled. On that same day, August 13th, 2013, Mr. Fees  
3 signed the declaration that in the joint submission --

4                   THE COURT: That said their 30(b)(6) designee we  
5 disagree with, was what he said?

6                   MR. STRAND: Yes. Basically calling their  
7 30(b)(6) witness out as somebody who misrepresented the  
8 facts under oath.

9                   THE COURT: No --

10                  MR. STRAND: I'm not going to --

11                  THE COURT: -- what the declaration says is that  
12 legal took a look at it and disagreed with --

13                  MR. STRAND: Disagreed with --

14                  THE COURT: -- the business --

15                  MR. STRAND: All right.

16                  THE COURT: The business guy's view of the  
17 thing.

18                  MR. STRAND: Right. An unhappy moment, to be  
19 sure, within CedarCrestone.

20                  But I think what's salient there is that  
21 declaration of how much they rely is dated the exact same  
22 day as the settlement agreement.

23                  One could reasonably assume that they were part  
24 and parcel of the same overall deal. And I'll get back to  
25 that in a moment. But I think that's important. Fair is

1 fair.

2 Now, based on that history, Rimini wants to see  
3 that settlement agreement. And I won't reiterate the  
4 rule -- the request for production or the subpoena. You've  
5 seen those in the joint submission.

6 Your Honor, yesterday I came across for the  
7 first time the case that was issued just a week ago or --  
8 yeah, a week ago tomorrow, the *Sanofi-Aventis* opinion.

9 I don't know if you got a chance to look at our  
10 supplemental authorities filing yesterday.

11 THE COURT: I did.

12 MR. STRAND: If it would be helpful, I'd be  
13 happy to hand up the case. If it's not, I won't.

14 THE COURT: I'm happy to take your case.

15 MR. STRAND: Thank you, ma'am.

16 What's interesting about this case, Your Honor,  
17 while it is in the patent context, but we have cited cases  
18 that say that the rules and the procedures for calculating  
19 damages in the patent context are applicable in copyright  
20 cases, this opinion by Magistrate Judge Rosenberg in the  
21 *Sanofi-Aventis* case out of the Central District is  
22 enormously informative.

23 If you just look with me for a moment, I've  
24 highlighted a couple of portions in there on the second  
25 page.

1           You remember the big fight in this case -- and I  
2           think this case -- the reason I bring this case to your  
3           attention first is I believe this is completely dispositive  
4           of the issue, presents all the right arguments for all the  
5           right reasons in all the right order as to why Rimini is  
6           entitled to receive a settlement agreement from  
7           CedarCrestone.

8           So if we look -- if you look with me first, Your  
9           Honor, it says, The Federal Circuit has rejected the  
10          argument that licenses in settlement agreements are  
11          categorically irrelevant to a reasonable royalty.

12          Which is essentially the position that Oracle's  
13          maintaining in this case, that they're categorically  
14          irrelevant. They're not. Then it cites the same case that  
15          we cite in our joint submission, the *Astrazeneca* case.

16          Then it goes on, talks about previously -- they  
17          said, No, you can't look to settlement agreements. Then it  
18          said, Nevertheless, *LaserDynamics* acknowledged that  
19          reliance on settlement agreements is permitted under  
20          certain limited circumstances. One such circumstance was  
21          presented in *ResQNet*.

22          And there's been enormous amount of briefing  
23          about *ResQNet*. I won't repeat it. But they said that's  
24          the case that said, No, maybe settlement agreements are the  
25          most comparable, are the most related license agreement.

1                   And then it goes on, The courts in *Astrazeneca*,  
2                   *LaserDynamics*, and *ResQNet*, as well as other cases cited by  
3                   counsel -- and we've cited other cases too -- had the  
4                   benefit of expert analysis in determining whether  
5                   settlement agreements were admissible in establishing a  
6                   reasonable royalty rate under the circumstances in those  
7                   cases.

8                   Then it goes on, Defendants in this case, same  
9                   position as Oracle, seek to avoid producing the settlement  
10                  agreements altogether.

11                  Same exact factual situation we have here. It  
12                  goes on for a little bit and it says, Under these  
13                  circumstances the court concludes that production of the  
14                  executed settlement agreements is appropriate so that  
15                  plaintiff's expert can evaluate them.

16                  That's all we want to do, get the settlement  
17                  agreement so our expert can evaluate that settlement  
18                  agreement in the context of this case and determine whether  
19                  that settlement agreement provides the data point for  
20                  calculating hypothetical fair market value of use damages  
21                  in this case.

22                  And I'll pause right there, Your Honor, because  
23                  we can make it really easy.

24                  If we can get the settlement agreement, and we  
25                  believe that under every authority we can get discovery of

1 the settlement agreement, I would encourage Your Honor to  
2 ask Mr. Hixson if there is a single case post-ResQNet  
3 denying discovery of a settlement agreement. We have not  
4 been able to find one.

5 If the Court will order the production of the  
6 settlement agreement within a very reasonable time, this  
7 week, a week, 10 days, we will look at that. If the  
8 settlement agreement does not support any type of analysis  
9 that will give rise to our damages opinion, we don't need  
10 the rest of the negotiation -- settlement negotiation  
11 material set forth in either the subpoena to CedarCrestone  
12 or in the request to Oracle.

13 So we'll make it easy. If we don't want it --  
14 if we don't want that stuff, we won't press it. But right  
15 now we have to press it because we don't know what's in the  
16 settlement agreement.

17 So in the first instance, Your Honor, all we  
18 seek is a settlement agreement. There's -- there's amazing  
19 amount of authority saying that we get it, starting with  
20 that *Sanofi-Aventis* case.

21 The other case that we rely on principally to  
22 get that settlement agreement is the *Oracle vs. SAP* case.  
23 And you recall, Your Honor, that's also cited in the joint  
24 statement. If I could -- this is the only other case I'm  
25 going to hand up. I promise.

1                   And that was a case, *Oracle vs. SAP*, the famous  
2   TomorrowNow case. It's very similar allegations of  
3   infringement and stuff like that in that case. There the  
4   Ninth Circuit, in reversing a damages award, made certain  
5   important findings that are relevant to us today.

6                   If you'll look with me, Your Honor, at the first  
7   red tabby on page 8 of the slip opinion, down toward the  
8   bottom it says -- let's see, it's the second little yellow  
9   highlighted part.

10                  It says, Although actual damages can be awarded  
11   in the form of lost profits, hypothetical damages also  
12   constitute an acceptable form of actual damages recover  
13   under Section 504B.

14                  So you can get these hypothetical damages.

15                  And then importantly, for our purposes today, go  
16   over with me if you would, please, Your Honor, to the  
17   bottom of page 12. It's the third tabby.

18                  It says, Although a copyright plaintiff need not  
19   demonstrate that it would have reached a license agreement  
20   with the infringer or present evidence of benchmark  
21   agreements in order to recover hypothetical license  
22   damages, it may be difficult for a plaintiff to establish  
23   the amount of such damages without undue speculation.

24                  Then it goes on, on the next page, Here because  
25   Oracle has no history of granting similar licenses and has

1 not presented evidence of benchmark licenses in the  
2 industry approximating the hypothetical license in question  
3 here, Oracle faced an uphill battle.

4 Clearly the Ninth Circuit anticipates reliance  
5 on benchmark license.

6 All we want to do in discovery is see the  
7 settlement agreement, see what it says, see if there's a  
8 license implicit. There has to be. There were allegations  
9 of infringement. They sought millions of dollars I --  
10 presumably. There had to be some type of settlement on  
11 that.

12 We want to see that document and determine what  
13 it says, how's it -- how might it be relevant to a damages  
14 case, how might we get it admitted into evidence in the  
15 damages case.

16 Now, once we see the settlement agreement -- and  
17 if the Court's so inclined, we believe that we're entitled  
18 to see the settlement negotiation documents. And we've  
19 asked for those both in the RFP and the subpoena.

20 The negotiations were between CedarCrestone and  
21 Oracle are relevant and discoverable. We've cited the *MSTG*  
22 case from the Federal Circuit and the *Barnes & Noble* case  
23 from California, I believe.

24 In addition, and I think this is what is  
25 critically important here, as I mentioned, Oracle relies on

1 the Fees' -- Mr. Fees' affidavit. You mentioned it, Your  
2 Honor.

3 That affidavit was part and parcel of the  
4 settlement agreement. In fact, it refers to agreeing with  
5 Oracle in paragraph 16.

6 It is simply not appropriate for Oracle to say  
7 that that Fees' declaration, which is a part of the  
8 settlement, is sufficiently relevant to this motion to try  
9 to use that to defeat the motion while at the same time  
10 using that motion -- that Fees' declaration as a sword and  
11 a shield to preclude us from getting the very settlement  
12 agreement that that declaration was a part of. It's a  
13 sword-and-shield problem.

14 We believe we are entitled, if for no other  
15 reason, that reason, to see the settlement agreement. And  
16 in fact if you look with me at *MSTG*, Your Honor, there's  
17 a -- we've cited that in our brief as well.

18 It says right there, As for the matter of  
19 fairness -- as a matter of fairness, *MSTG*, which is anomaly  
20 in Oracle's position here, cannot at one time have its  
21 expert rely on information about the settlement  
22 negotiations and deny discovery as to those same  
23 negotiations.

24 So what we want is the agreement and the  
25 negotiations. The *MSTG* case is a 2012 Federal Circuit

1 case.

2 So, Your Honor, our view is we're entitled to  
3 the settlement agreement and we're entitled to the  
4 negotiation materials.

5 And, again, if Your Honor doesn't want to go all  
6 that way today, if Oracle's willing, we'll look at the  
7 settlement agreement and in good faith we'll tell them  
8 whether we want to proceed or not.

9 Now, Oracle's arguments that that shouldn't be  
10 produced are simply misplaced. First of all, they argue  
11 that -- they try to argue that settlement licenses are not  
12 discoverable. That is simply wrong.

13 We cite *ResQNet*, we cite the *Caluori* case, we  
14 cite the *MSTG* case. I've just given you the *Sanofi-Aventis*  
15 case. All of them recognize the basic concept that since  
16 *ResQNet*, settlement licenses have been admissible in trial  
17 for damages purposes. Obviously if they're admissible in  
18 trial, they can certainly be discoverable. As I've  
19 indicated, there is no case that we can find that says a  
20 settlement agreement is not discoverable.

21 Where are we then? Oracle has inappropriately  
22 conflated relevance and admissibility in this case, the  
23 Rule 26(b)(1) standard we started out with, information  
24 within the scope of discovery need not be admissible  
25 evidence to be discoverable.

1                   So we seek discovery. We're not talking about  
2                   admissibility right now. That's for Judge Hicks on down  
3                   the road.

4                   Should we choose to use that settlement  
5                   agreement and the information in there as a data point,  
6                   there's no case, as I indicated, that says they can't be  
7                   used. We've cited those.

8                   Now, timing. Let's talk a little bit about  
9                   timing. They cite the Fees' affidavit or declaration to  
10                  say that settlement licenses that predate the infringement  
11                  are irrelevant -- that postdate the infringement, are  
12                  irrelevant.

13                  Well, that simply makes no sense. Virtually  
14                  every settlement agreement is going to postdate  
15                  infringement. So that isn't a valid reason not to produce  
16                  it.

17                  So we are entitled to the document both from  
18                  CedarCrestone and from Oracle. And we'd like to get it --  
19                  the documents, both the settlement agreement and the  
20                  negotiation materials, from both of them. We don't want it  
21                  from both of them. We'll take it from either one or the  
22                  other in the easiest possible way.

23                  Now, before I get on to the proportionality, I  
24                  want to spend a few minutes on the Spinnaker subpoena.

25                  But I'll pause there, Your Honor. Do you have

1 any questions that I can answer about the CedarCrestone  
2 situation?

3 THE COURT: No, sir. We're talking about  
4 Request for Production No. 37 --

5 MR. STRAND: Yes, ma'am.

6 THE COURT: -- and your subpoena to them.

7 MR. STRAND: And my subpoena to them. Yes,  
8 ma'am.

9 Okay. Spinnaker next? All right. Here we go.

10 So Spinnaker, we don't have a request  
11 specifically out to Oracle on Spinnaker. Now, let's think  
12 about Spinnaker a little bit.

13 Spinnaker is an organization that was also  
14 mentioned in case 1. As of today on their website  
15 Spinnaker provides -- claims to provide services for JDE,  
16 Siebel, and E-Business, all but one of the services that  
17 are accused in this case.

18 So let's look at what the factual context is  
19 regarding Spinnaker. In case 1 in response to an  
20 interrogatory, Oracle admitted or stated that it was its  
21 conclusion that Spinnaker was not infringing the JDE  
22 copyrights. And that's important. Because that makes  
23 Spinnaker a noninfringing alternative.

24 Apparently that's correct because Oracle hasn't  
25 sued Spinnaker. So as we sit here today, Spinnaker appears

1 to be a noninfringing alternative.

2 Now, why is that important? Why does that make  
3 Spinnaker's business practices relevant to this case?

4 Well, let's look at *Oracle vs. SAP*, if you will,  
5 please, Your Honor, the first tab. Clear Ninth Circuit law  
6 is that a plaintiff in a Section 504 action must establish  
7 a causal connection between the infringement and the  
8 monetary remedy sought. They have to show causation.

9 In its portion of the joint submission, Oracle  
10 cited to a case called *Panduit*. And *Panduit's* an old  
11 patent case that basically says in order to get lost  
12 profits you have to prove four things.

13 The one thing that's relevant here today is  
14 this: In order to get lost profits in this case, in order  
15 to prove but-for causation, Oracle's going to have to prove  
16 the absence of noninfringing alternatives. So Oracle's  
17 going to have to prove at trial that Spinnaker is not a  
18 noninfringing alternative.

19 We went through a ton of that at case 1, but I'm  
20 sure you don't want to hear about that. So in order to  
21 make their proof, they have got to prove that Spinnaker is  
22 a noninfringing alternative.

23 So the existence of Spinnaker as a noninfringing  
24 alternative defeats Oracle's ability to get lost profits  
25 under the *Panduit* case. So it's pretty important, pretty

1 relevant. We want to make sure it's a noninfringing  
2 alternative.

3 Secondly, the presence of a noninfringing  
4 alternative also affects the hypothetical license  
5 negotiation. If you'll look with me again, please, Your  
6 Honor, at page 9 of the Oracle opinion, the second tabby  
7 there, it says, down and toward the bottom of the  
8 right-hand column, The touchstone for hypothetical license  
9 damages is the range of the license's reasonable market  
10 value. The question, therefore, is not what the owner  
11 would have charged but rather what is the fair market  
12 value.

13 The next little portion, That is fair market  
14 value is based on an objective, not a subjective analysis.

15 Our damages expert wants to look at the  
16 Spinnaker situation. We want to look at the Spinnaker  
17 situation for causation and damages for reasons -- for the  
18 following reason, insofar as they relate to fair market  
19 value damages.

20 Obviously if Oracle is a monopolous in the area  
21 of providing these services, then it will be able to  
22 command a higher reasonable royalty. If it is not a  
23 monopolous, because there is a noninfringing alternative,  
24 then the amount of the reasonable royalty we'll be able to  
25 charge will be less.

1                   And Oracle faces a conundrum here. In its  
2 licenses it says that its clients can use third-party  
3 service providers after the first year. But at trial --  
4 which seems to suggest that they can -- they can have a  
5 noninfringing alternative. And at trial even Ms. Catz and  
6 Mr. Allison admitted that that was allowed.

7                   But at trial they'll also want to say, as they  
8 did in case 1, that, no, there are no noninfringing  
9 alternatives.

10                  So we seek discovery from Spinnaker to establish  
11 what they do to establish that it's a noninfringing  
12 alternative, to show both that there were alternatives for  
13 the customers that left Oracle to come to Rimini and that  
14 they -- it would depress fair market value damages and  
15 defeat the ability of Oracle to recover lost profit  
16 damages.

17                  Now, we've had a lot of discussion, and I want  
18 to go into it, about relevant/nonrelevant customers. At  
19 least five customers have left Rimini to go to Spinnaker.  
20 So the two are in competition. Relevant customers for whom  
21 we believe Oracle will seek damages are at play here.

22                  And finally, Your Honor -- and I think perhaps  
23 this is the most telling point -- is sauce for the goose,  
24 sauce for the gander. We just spent quite a bit of time  
25 talking about the subpoena that Oracle has served on now

1 248 Rimini customers.

2 And let me read you paragraph 8D of the subpoena  
3 that they've sent to any single -- every single one of our  
4 customers essentially.

5 It asks for your consideration of third-party  
6 support providers for software support related to  
7 PeopleSoft, J.D. Edwards, Siebel, or Oracle E-Business  
8 Suite software.

9 Today, right now, as we sit here, Spinnaker  
10 claims it is a third-party support provider for three of  
11 those four lines of business.

12 How, Your Honor, can it be relevant in the  
13 subpoena that Oracle served our clients and not be relevant  
14 for us to seek that information vis-à-vis causation and  
15 damages?

16 Discovery is proportional. It's also a two-way  
17 street. And we want that street to go -- to go both ways.

18 Now, in our brief we said if Oracle will  
19 stipulate right now that Spinnaker is a noninfringing  
20 alternative, then we don't need that discovery. But if  
21 Oracle's not prepared to stipulate to that, then we need to  
22 proceed with that discovery.

23 Your Honor, based on that, I think it's  
24 abundantly clear that also the information that is sought  
25 in the Oracle -- I mean in the Spinnaker subpoena, is

1 relevant.

2 Now, let's go to the next question then, the  
3 Court -- the third question I think you've got to answer,  
4 Your Honor, is is the information that Rimini seeks  
5 protected -- excuse me, proportional to the needs of the  
6 case in light of 26(b)(1)? And I -- we've got that in  
7 front of us now. And I want to run through that quickly.

8 The one thing I do want to recall for the Court,  
9 though, is this. In the advisory committee's notes to the  
10 2015 amendments to Section 26(b)(1), they said, and I  
11 quote, "Nor is the change in the rule intended to permit  
12 the opposing party to refuse discovery simply by making a  
13 boilerplate objection that it is not proportional."

14 We've gotten the boilerplate objection. There  
15 is no showing here by Oracle that it's not proportional.  
16 Set that aside. I'll show you why it is proportional.  
17 Let's go through some of those factors and our analysis of  
18 those factors.

19 First of all, as I've just shown at great  
20 length, the materials that Rimini seeks are important and  
21 critical to its defenses and claims regarding causation and  
22 damages in this case. We need them. We want them. We  
23 want to see them.

24 They could be case dispositive, depending on  
25 what the -- or not dispositive, but dispositive of the

1 damages issue, depending on what that settlement agreement  
2 says. But we haven't been able to look at it.

3 The second thing is Rimini has no access to the  
4 requested material. They can't get it. We can't get that  
5 stuff anyplace else. I think that's obvious.

6 Third, I think we can all agree that the amount  
7 in controversy here is going to be substantial. As the  
8 Court will remember, in closing argument they sought over  
9 \$200 million against Rimini in case 1. And we assume that  
10 will be something akin to that in this case.

11 So it's critical information. We can't get it  
12 anyplace else. The amount in controversy is substantial.

13 As we mentioned in the joint submission that we  
14 submitted, the subpoenas have been narrow in scope. We try  
15 to scope them so that they're not overbroad.

16 Now, we haven't had an opportunity to talk with  
17 either Spinnaker or CedarCrestone about their objections.  
18 They objected last -- a week ago Friday. Good Friday.

19 We would like, Your Honor, to go back and see if  
20 we can work out something with them to get a lesser amount  
21 of data that we can be happy with.

22 So I -- in some respects we view that the  
23 current motion is premature. And if the Court wants to  
24 say, Listen, I'll give you a month, go out and talk with  
25 them and see if you need to darken my door with this again

1 next month, we'd be happy to do that, Your Honor.

2 But precipitously this has been filed, and so  
3 we're here today dealing with it.

4 Finally, the burden to produce the requested  
5 materials is certainly no greater than the burden that's  
6 been placed on Rimini's clients, all 248 of them who have  
7 been served. And we're talking about two subpoenas here.

8 So because the material is relevant, because  
9 it's their burden, Oracle's burden to prove on -- that  
10 there's an absence of noninfringing alternatives, we're  
11 entitled to that document. That's why this side-show  
12 comment is simply incorrect. It's their burden. This  
13 isn't a side show. This is a critical element of their  
14 proof that we want to discover on and challenge.

15 Now, last question. I'm getting close to the  
16 end. And you've been very patient. Thank you.

17 Do you have any questions up to that point?

18 THE COURT: No, sir. I'm not hesitant to ask  
19 questions if I have them.

20 MR. STRAND: I know. But I want to give you a  
21 chance to breathe. And me too.

22 Fourth question is this. Are there any  
23 privileges or prior rulings of the Court, this Court, that  
24 bar discovery of the information that we're seeking? And I  
25 think the answer to that question is no.

1           First of all, the October 15th ruling did not  
2 prohibit this discovery. This is discovery of third-party  
3 service providers that dealt with broader discovery on  
4 other issues.

5           And you also specifically said, Your Honor, and  
6 you quoted it in the brief, that you were not foreclosing  
7 discovery -- other discovery. So we're here on that. We  
8 don't believe that was cut off.

9           In the February 15th order, we were -- in the  
10 February 15th conference, excuse me, February 2016, we were  
11 talking about nonRimini customers versus Oracle's  
12 characterization of relevant customers.

13           This has nothing to do with that. This is  
14 third-party service providers, not liability side, this is  
15 damages and causation as I've said at length.

16           The 2014, they make a sideboard comment on that.  
17 You will recall the first time we met was back in October  
18 of 2014. We were seeking to reopen discovery to get the  
19 CedarCrestone subpoena. And Your Honor said, No, I'm not  
20 going to reopen discovery. Discovery's closed. Go to  
21 trial on case 1.

22           That had nothing to do with whether we could get  
23 the subpoena or not, it was just whether you were going to  
24 reopen discovery on case 1. That's water way under the  
25 dam -- way over the dam, long since gone. So that has

1 nothing to do with the ruling here today.

2 The second point I make, Your Honor, is Rule 408  
3 is a rule of evidence, not a rule of discovery. And it  
4 does not in any way preclude discovery of the CedarCrestone  
5 agreement. We cite to the *Hooks* case out of the District  
6 of Nevada in 2014, which rejects that very argument.

7 And think about this. How would all of those  
8 settlement agreements be in evidence in patent cases if  
9 Rule 408 prohibited even their discovery? It doesn't.

10 Third, they make reference to the fact that the  
11 settlement agreement's confidential.

12 As Your Honor is well aware, we have a very  
13 comprehensive protective order in place in this case. It  
14 provides for attorneys' eyes only. And the parties have  
15 even agreed to a heightened level of protection if we need  
16 to do that. We're certainly willing to work with them on  
17 that if we need to.

18 All we want is to see it. The lawyers need to  
19 see it so that legally we know what it's about. And we  
20 want our damages expert to see it, that material.

21 Finally, we believe Oracle lacks standing to  
22 even pursue the protective order this time. So it's  
23 premature. But they also lack standing.

24 They -- as they say in Texas, where I practiced  
25 for a while, Oracle really doesn't have a dog in this

1 fight. This is between us and Spinnaker and us and  
2 CedarCrestone. Oracle doesn't need to get in the middle of  
3 it, just like we don't need to get in the middle of their  
4 subpoenas to our clients.

5 So if we could get a month to work with those  
6 folks, see what we can get, and not have a precipitous  
7 protective order cutting off all discovery, maybe we could  
8 get someplace and maybe we could get something done.

9 So, Your Honor, in summary, what do we want? We  
10 want the Court's order compelling Oracle to produce the  
11 CedarCrestone settlement agreement. We believe we're  
12 entitled to that under every authority.

13 We want an order from the Court compelling  
14 Oracle to produce materials related to the negotiation of  
15 the CedarCrestone settlement agreement. And if Oracle  
16 will give us --

17 THE COURT: Even though your Request for  
18 Production No. 37 doesn't ask for that?

19 MR. STRAND: I believe it does, Your Honor, in  
20 the definition of documents. If you disagree, I'm not  
21 going to argue with the Court. Never a good plan.

22 If -- we'll file another request for production.  
23 If we -- if you don't believe it's coming --

24 THE COURT: Well, you just told me that if you  
25 review the settlement agreement, depending on what it says,

1     you may not need it.

2                   MR. STRAND:   Exactly.   That was going to be my  
3     separate offer.   If we -- if we can -- if you don't want to  
4     compel it, we're happy to take a ruling today that will  
5     review the settlement agreement, be back here in a month if  
6     you think we want to go to any further.   I'm happy with  
7     that, Your Honor.   I just want to see the settlement  
8     agreement.

9                   And I really, really don't believe about  
10    fighting about stuff I don't know about.   And I don't know  
11    what's in the settlement agreement.   If there's nothing  
12    there, there's nothing there.

13                   So first we'd like an order -- if you feel so  
14    inclined, which I'm not picking up that you are, to compel  
15    them, but if you don't feel like that, if the Court -- if  
16    you so desire, we'll look at the settlement agreement and  
17    get back -- get back to Oracle, and if necessary back to  
18    you.

19                   The third thing we want is to deny their motion  
20    for a protective order as to the Spinnaker subpoena so that  
21    we can have time to go to Spinnaker and see what we can  
22    work out with them to get.   That's what we'd like.   We  
23    think it's reasonable, we think it's proportionate, and we  
24    don't think there's any reason not to get that.

25                   Again, if you've got any questions, I'm happy to

1 answer.

2 THE COURT: Thank you, Mr. Strand.

3 MR. STRAND: Thank you.

4 THE COURT: Let me hear from -- who will be  
5 arguing Oracle's position?

6 MR. HIXSON: I will, Your Honor.

7 THE COURT: Mr. Hixson.

8 MR. HIXSON: Good morning, Your Honor. I'd like  
9 to start with Oracle's motion for a protective order.

10 Obviously the Spinnaker subpoena has nothing to  
11 do with settlements. And seven of the nine requests for  
12 production and deposition topics in the CedarCrestone  
13 subpoena don't have anything to do with settlements.

14 So we can cabin out a large area where we're  
15 moving for a protective order. And then after that I will  
16 get to the discussion about RFP 37 and Rimini's request for  
17 the CedarCrestone settlement, which I think presents  
18 distinct issues from those.

19 First let's start with why you should do  
20 something now and why Oracle has standing to seek this  
21 protective order.

22 Our protective order motion was pretty  
23 straightforward. We relied on the Court's rulings in  
24 October and in February limiting the scope of discovery  
25 into the third-party support providers.

1                   October dealt generally with third-party  
2 support. It dealt with liability. It dealt with  
3 causation --

4                   THE COURT: It also dealt with --

5                   MR. HIXSON: -- it dealt with --

6                   THE COURT: -- extraordinarily overbroad  
7 discovery requests that Rimini had served.

8                   MR. HIXSON: That's right. And we think that  
9 the lines that the Court drew in October and February  
10 provide the appropriate guidance for what should be  
11 followed now.

12                   In particular the Court cabined discovery into  
13 discovery about relevant customers and their connection to  
14 these other third-party support providers; relevant meaning  
15 Rimini's customers, the customers that Oracle's subpoenaing  
16 in its subpoenas and the issues regarding communications  
17 about, you know, third parties or what third parties have  
18 done for those relevant customers.

19                   And when you look at the subpoenas to  
20 CedarCrestone, the 9 requests and the 11 to Spinnaker, none  
21 of them are in any way limited by that at all.

22                   This morning counsel for Rimini said that there  
23 are, to their understanding, five customers that left  
24 Rimini to go to Spinnaker.

25                   But if you compare the very broad requests that

1       went to Spinnaker, there's no limitation at all --

2               THE COURT:   They're a --

3               MR. HIXSON:   -- to those five.

4               THE COURT:   -- lot narrower than the ones you  
5       served them with last time around.

6               MR. HIXSON:   That's true.   But we have never  
7       been shy about saying that certain issues were decided in  
8       the first case and that they don't need to be relitigated  
9       here.

10              And a lot of the issues that we -- that were the  
11       subject of Oracle's subpoena in the first case dealt with  
12       the licensing issues, dealt with liability issues, and  
13       dealt with infringement issues that have since been  
14       resolved, a large part by Judge Hicks' orders on summary  
15       judgment and by the liability findings of -- about  
16       Rimini's, at least their old process at trial.

17              And that's why we don't think we need to replot  
18       that ground which a lot --

19              THE COURT:   But noninfringing --

20              MR. HIXSON:   -- of their requests go to.

21              THE COURT:   -- alternatives is still an issue in  
22       this case.

23              MR. HIXSON:   That -- that's true.   And that's  
24       why the line that the Court drew last October and this  
25       February is the appropriate one here, which is the

1 particular relevant customers at Rimini Street, what other  
2 options did they consider? Whereas Rimini's request to  
3 CedarCrestone and Spinnaker are --

4 THE COURT: But they're talking about their need  
5 for damages analysis and causation. Because what are your  
6 damages in a copyright infringement case?

7 Now, hypothetical a license; correct? Fair  
8 market value of a hypothetical license or lost profits.

9 MR. HIXSON: Right. There's -- and then  
10 infringers' profits as well.

11 THE COURT: And in your *Oracle/SAP* case, the  
12 Ninth Circuit agreed with you that you don't have to prove  
13 that you were given a license, and your executives indeed  
14 said, We never give people licenses.

15 But still the Court has to engage in the  
16 hypothetical damages analysis.

17 MR. HIXSON: Well, that's all true. And that  
18 I'll address when I talk about the CedarCrestone  
19 settlement. But for obviously Spinnaker, none of that is  
20 at issue about hypothetical licenses or because there --  
21 there's no contention there was any such license.

22 And in terms of noninfringing alternatives, if  
23 you look at particular Rimini customers and what are the  
24 options they considered, which is what we asked for in our  
25 subpoena, and which is the line that we think the Court

1 drew in October and February, that would be the appropriate  
2 cabining of the discovery to those third-party support  
3 providers.

4 And Rimini's requests go way beyond that. They  
5 ask for every facet of their business operations, all  
6 document about how they provide support going back to 2008,  
7 which is the time period covered in the first lawsuit as  
8 well.

9 These subpoenas go way beyond what the Court has  
10 already ordered. And that --

11 THE COURT: Well, if I understand correctly,  
12 what you told me about CedarCrestone in your settlement  
13 with CedarCrestone and the affidavit that Mr. Fees provided  
14 to you contemporaneously with your settlement agreement,  
15 they stopped infringing in 2012, and they don't do what  
16 they did that caused them to be sued for infringement after  
17 they settled with you -- or after actually the end of 2012,  
18 before the settlement was --

19 MR. HIXSON: Before the settlement, about eight  
20 months before the settlement.

21 Well, Your Honor, I can see that you're  
22 interested in argument about the settlement. So why don't  
23 I turn to that issue now.

24 THE COURT: Well, they're kind of all connected.

25 MR. HIXSON: They're a little bit connected.

1 Obviously the Spinnaker one is distinct.

2 But turning to the settlement --

3 THE COURT: It's distinct in that you don't have  
4 a settlement agreement with it. It's --

5 MR. HIXSON: Right.

6 THE COURT: But you still regard them as a  
7 noninfringing alternative; correct?

8 MR. HIXSON: We're not prepared to make that  
9 stipulation now, Your Honor.

10 The issue here is whether -- turning to the  
11 CedarCrestone settlement, they have -- Rimini has satisfied  
12 both the requirement under Rule 26 to show that that  
13 discovery is relevant for producing in the litigation.

14 And it's funny that both of us have this -- the  
15 same view that the *Genentech* case that Rimini provided  
16 actually does provide a useful framework for how to assess  
17 the relevance of a potential settlement.

18 This case that they provided to you concerned  
19 the Cabilly patents and whether there could be discovery  
20 into settlements that *Genentech* had entered into for some  
21 other patents in some of that litigation.

22 And initially the court's first ruling -- and  
23 this is you can see on the second page of the opinion that  
24 Mr. Strand handed to you -- was that in September 2011, the  
25 Northern District of California said no, that court would

1 not order the production even in discovery of the  
2 settlement concerning the Cabilly patents.

3 It was Judge Feltzer in that case said that  
4 these documents were at best marginally relevant to their  
5 commercial success and damages issues in the case. That's  
6 on the second page of that opinion.

7 And then three years later, in August 2014,  
8 Judge Feltzer again denied a motion to compel another one  
9 of those settlements, again saying that they were  
10 marginally relevant and that if there were a change of  
11 circumstances or unexpected developments in the case, that  
12 could render them more than marginally relevant.

13 And then what happened leading to the 2016  
14 opinion is that there was a change in circumstances. And  
15 the Court identifies that on the next page, page 3 of 4 of  
16 the decision, that in 2015 there were additional  
17 settlements.

18 And then it's towards the end of the third page,  
19 it's the language that Rimini didn't highlight. It's the  
20 language right above that, where they say, Plaintiffs argue  
21 that the settlement agreements account for half of the  
22 licenses under which defendants receive royalties from  
23 products that, like Praluent, have FDA approval and are on  
24 the market.

25 In other words, the fact of a settlement

1 concerning a relevant product wasn't enough, and it wasn't  
2 enough twice in a row. It was when on the third time the  
3 plaintiff came back and said 50 percent of all of the  
4 sales, all of the license sales for this patented product  
5 are occurring under litigation settlement agreements.

6 At that point the Court said, Well, okay now,  
7 now, you've established relevance.

8 Let's contrast that with the showing that Rimini  
9 has made here. There's no showing that CedarCrestone  
10 accounts for any significant fraction of support sales,  
11 license sales, or anything, no matter how you would define  
12 what would be relevant in terms of what Oracle has.

13 They haven't attempted to argue that. They've  
14 come nowhere near the type of showing that was held here  
15 simply to justify discovery because these are discovery  
16 orders.

17 We have shown that the infringing contact of the  
18 maintained servers was ended in December 2012 and that the  
19 settlement was distant by eight months after that.

20 We've also shown that CedarCrestone and Rimini  
21 were in different positions, that CedarCrestone had a  
22 preexisting business relationship with Oracle, it was part  
23 of the Oracle partner network, and indeed breach of those  
24 contracts were at issue in that case.

25 So there's no showing like there was in this

1     *Genentech* case that any kind of license or settlement had  
2     any -- was a benchmark, that it accounted for a significant  
3     amount of sales, or that Rimini is in a similar position to  
4     CedarCrestone.

5             So as a factual matter, we think that they have  
6     not shown that the settlement agreement is relevant in any  
7     way.

8             We've also gone beyond just the bare relevant  
9     statements to cite for Your Honor two cases, *Big Baboon* and  
10    *Brantley v. Boyd*, dealing with the policy applied by courts  
11    in the Ninth Circuit adopting heightened scrutiny for  
12    discovery requests concerning producing settlement  
13    agreements.

14            And those were discovery cases. They weren't  
15    admissibility cases, they were discovery cases where the  
16    courts deny discovery into settlement agreements because  
17    there hadn't been a sufficient factual showing to satisfy  
18    that heightened scrutiny standard.

19            And so under that kind of standard, Rimini  
20    hasn't met that burden either.

21            They say there's some PeopleSoft copyrights at  
22    issue in this case, there's some PeopleSoft copyrights that  
23    were at issue in CedarCrestone, and that's all that they've  
24    argued.

25            That certainly wasn't enough in the *Genentech*

1     trilogy of cases to take access to the settlements, and it  
2     doesn't satisfy any kind of heightened scrutiny standard.  
3     Because there's no showing that CedarCrestone sales account  
4     for any significant percentage of Oracle sales or that  
5     there's any kind of factual or otherwise similarities  
6     between Rimini Street and CedarCrestone.

7             So we submit that under these heightened  
8     standards that they simply haven't made the showing  
9     necessary to justify the production of those.

10            And, again, ordering a company to produce a  
11     settlement agreement without any real showing that it's  
12     relevant or that it bears on the issues in the case, that's  
13     a big deal. It wades out into other settlement discussions  
14     that companies can have.

15            And, furthermore, the way they want not just the  
16     settlement agreement but, in their subpoena to  
17     CedarCrestone, settlement negotiations, that's a pretty  
18     hefty thing for a court to order a party to produce and is  
19     invasive of the policy of promoting settlements.

20            And so we would submit they have not made the  
21     necessary showing to show that the settlement agreement  
22     should be produced at all.

23            Substantively, in terms of whether a settlement  
24     agreement can even be used to support a reasonable royalty  
25     rate, we've cited for the Court a number of courses --

1 cases that say, No, never, that's simply not possible.

2 Rimini's response is to cite a couple of cases  
3 that say, Well, maybe, in some circumstances that it could  
4 be possible to serve as a benchmark.

5 But the important thing is there's unanimity  
6 among the courts that as a matter of substantive law it's  
7 very dubious to try to use litigation settlement agreements  
8 to come in as --

9 THE COURT: Correct. But --

10 MR. HIXSON: -- evidence of a --

11 THE COURT: -- sometimes that's --

12 MR. HIXSON: -- (indiscernible) royalty.

13 THE COURT: -- all there is.

14 MR. HIXSON: Sometimes that's all there is.

15 But here that's not the case. Oracle routinely  
16 goes out and licenses software to customers and charges  
17 support contracts to them.

18 Those practices, I mean, those are routine.  
19 Those are the overwhelming majority of the support  
20 business. That -- those are --

21 THE COURT: That wasn't --

22 MR. HIXSON: -- out there --

23 THE COURT: -- the position --

24 MR. HIXSON: Those are benchmarks.

25 THE COURT: -- you took in SAP.

1           MR. HIXSON: But in *SAP* -- well, in *SAP* that was  
2           relying on the defendant's internal documents about how  
3           they valued their prospective use of the Oracle software  
4           and, as well, Oracle's executives' testimony about how they  
5           would charge *SAP* to use on it. Because those were very  
6           different from a customer phasing of license like the ones  
7           that Oracle typically enters into.

8           And the Ninth Circuit held that that showing  
9           wasn't adequate.

10           But that doesn't mean that the CedarCrestone  
11           settlement somehow, because it's so factually distinct, it  
12           doesn't account for any significant fraction of shares.

13           So at least Rimini hasn't established that would  
14           somehow come within relevance or trump the policy that  
15           there's heightened scrutiny before producing a settlement  
16           agreement as here.

17           And so -- and likewise in *SA* -- *Oracle v. SAP*,  
18           there was no suggestion by the Ninth Circuit that a  
19           settlement that resulted from litigation would somehow be  
20           substantively relevant.

21           There continues to be that substantive  
22           skepticism.

23           So what we have here are really three layers  
24           under Rule 26. We had as a matter of substantive law that  
25           many courts outright refuse use settlement agreements as a

1 relevant benchmark. Some sometimes allow it. But it's  
2 under unusual circumstances.

3 Piled on top of that we have the absence of a  
4 factual showing that Rimini Street is in any way similarly  
5 situated to CedarCrestone or that there's any significant  
6 sales through the settlement agreement.

7 And then on top of that, we have this heightened  
8 discovery standard which does apply in discovery cases that  
9 courts in the Ninth Circuit apply to resist producing  
10 settlement agreements.

11 And when you add these things to each other, I  
12 think you get to the conclusion that the settlement  
13 agreement with CedarCrestone isn't discoverable at all.

14 With that I'd like to turn back to the  
15 protective order issues. Because seven of the nine  
16 requested CedarCrestone just have nothing to do with the  
17 settlement agreement and all of them to Spinnaker don't  
18 either.

19 The causation and damages issues were certainly  
20 in front of this Court last October and this February when  
21 you drew the line that discovery, at least directed at  
22 Oracle concerning these third parties, should be limited to  
23 relevant customers.

24 And in February Rimini Street mentioned  
25 CedarCrestone and Spinnaker by name in their motion to

1       compel. So, again, this issue was keyed up.

2               It was remarkable to me this morning how  
3       Rimini's counsel began with handing you a copy of Rule 26  
4       and spent more than half an hour arguing as if none of  
5       these issues had been before Your Honor before when, in  
6       fact, you had heard and decided them last October and again  
7       in February on very significant issues here.

8               They largely said nothing to justify the request  
9       to CedarCrestone. They suggested they might not need any  
10      of them, actually. And they said very little about the  
11      requests to Spinnaker.

12              Most of these requests really have nothing to do  
13      with causation or damages. Like the Request No. 1 to  
14      CedarCrestone deals with licensing regime that  
15      CedarCrestone operates under; their Requests 6 or 7 to  
16      CedarCrestone and 9 to Spinnaker as wholesale about their  
17      entire business operations not limited to causation or  
18      damages issues, not relevant -- not limited to relevant  
19      customers in any way.

20              We think a lot of these issues were resolved on  
21      summary judgment in the first case where Judge Hicks had  
22      interpreted the relevant Oracle licenses and where there  
23      was already a finding that at least the Rimini 1.0 process  
24      was infringing. And so the discovery into the  
25      CedarCrestone business model to see about industry

1 practice, to look at license interpretation simply isn't  
2 relevant here and isn't something that needs to be -- isn't  
3 something that needs to be retread.

4 In this case as we briefed in October and in  
5 February, we heard a talk about whether Rimini Street's 2.0  
6 process in lawful and then the damages that Rimini should  
7 have to pay for the 1.0 process while it continued to be in  
8 effect.

9 On that damages point, we've acknowledged that  
10 certain causation of damages evidence may be relevant from  
11 third parties like CedarCrestone and Spinnaker, but it  
12 would be cabined to discovery about relevant customers,  
13 namely Rimini customers, that considered or went to or went  
14 from CedarCrestone and Spinnaker.

15 And if you look at these very broad subpoenas  
16 and deposition topics that they -- that Rimini has  
17 propounded, none of them are in any way limited to those  
18 topics.

19 Which gets us to why we have brought this as a  
20 protective order motion in front of Your Honor.

21 THE COURT: And your -- and both CedarCrestone  
22 and Spinnaker have served objections that point to those  
23 narrowing of the subpoenas --

24 MR. HIXSON: Yes.

25 THE COURT: -- and rely upon the two prior

1 status conferences in which I made discovery rulings in  
2 this case.

3 Why aren't they perfectly competent to directly  
4 work with counsel for Rimini to narrow the requests in  
5 accordance with what they understood my rulings were?

6 MR. HIXSON: They certainly could work with  
7 Rimini. They have also, though, objected across the board  
8 to all of the requests and to all of the deposition topics.

9 The dispute between the parties and now the  
10 third parties, as well, is over the interpretation of Your  
11 Honor's orders. And you heard Rimini's position that they  
12 somehow take the view that those orders have no  
13 implications because they claim their subpoenas are within  
14 those, where CedarCrestone and Spinnaker have asserted that  
15 all of these requests are outside of them.

16 One path we can go down is for Your Honor to  
17 make clear what your orders were, which will provide a lot  
18 of guidance for the parties.

19 The path that I think Rimini is contemplating is  
20 that there would be these meet-and-confers and negotiations  
21 with CedarCrestone and Spinnaker and ultimately there could  
22 be motions to quash or to compel filed in the District of  
23 Colorado or the Southern District of Georgia.

24 If that were to happen, obviously those would be  
25 before different federal judges. But I expect those judges

1 would also want to know your view on what you've already  
2 decided. Because that's the principal dispute between the  
3 parties and the third parties, is your interpretation of  
4 your prior orders.

5 And so that's why we're here before you today  
6 asking you to give guidance on that and to state your view  
7 about whether or not these subpoenas comply with your  
8 Court's prior guidance. Because that would moot a lot of  
9 these discussions and disputes.

10 And in fact if there end up being motions to  
11 compel and motions to quash filed in Colorado and Georgia,  
12 Oracle, or potential third parties, likely would move to  
13 transfer those back to Your Honor to have you --

14 THE COURT: Well, that --

15 MR. HIXSON: -- assess what --

16 THE COURT: -- happens all the time. And that  
17 makes perfect sense.

18 MR. HIXSON: Yes.

19 THE COURT: And the rule allows it if that  
20 happens. But it hasn't happened yet.

21 MR. HIXSON: Right. But under Rule -- and  
22 that's why we moved under Rule 26, which provides that a  
23 party can bring a motion for protective order in the court  
24 where the action is residing, because the issue we're  
25 dealing with is your prior orders and what effect do they

1 have --

2 THE COURT: Is there any --

3 MR. HIXSON: -- on the subpoena.

4 THE COURT: -- reason why the parties can't just  
5 stipulate to the -- any motion to compel and -- that would  
6 have to be with the acquiescence and approval of the -- of  
7 CedarCrestone and --

8 MR. HIXSON: Spinnaker.

9 THE COURT: -- Spinnaker? Just present any  
10 issue concerning the breadth of the subpoenas that they are  
11 unable to work out here.

12 MR. HIXSON: I see no reason why we could not  
13 reach such a stipulation, Your Honor.

14 THE COURT: Instead of opening a miscellaneous  
15 action in their state of incorporation where they do  
16 business?

17 MR. HIXSON: I have no reason to think that  
18 stipulation would not be appropriate.

19 THE COURT: And, Mr. Strand, is there any reason  
20 why Rimini wouldn't be willing to stipulate that --

21 MR. STRAND: No, Your Honor --

22 THE COURT: So that we don't --

23 MR. STRAND: -- other than the --

24 THE COURT: -- waste time having another court  
25 take a first look?

1           MR. STRAND: Other than the notion that misery  
2 loves company, I think it would be appropriate to stipulate  
3 to bring it back here and let you --

4           THE COURT: Well, it's up to, of course, the --

5           MR. STRAND: Sure. Subject to their approval.

6           THE COURT: CedarCrestone and Spinnaker  
7 certainly have the right to take whatever action they deem  
8 appropriate on your subpoenas.

9           MR. STRAND: Right.

10          THE COURT: But I can predict that any other  
11 court in a case that's been going on as long as this one  
12 has and is preceded by prior litigation is going to want  
13 this Court to make any determination.

14          MR. STRAND: Yeah. And that's why we're  
15 suggesting a month where we can try to sort all those  
16 things out and not bother you or any other court with this  
17 and just work it out in a gentlemanly fashion and get the  
18 documents that we think we need and move on.

19          MR. HIXSON: This is obviously up to Your  
20 Honor's discretion. And because we saw a conflict between  
21 the subpoenas and your orders in October and in February,  
22 we wanted to bring this to the Court's attention as  
23 promptly as possible.

24                 And we would like an order clarifying that these  
25 are outside the scope of your prior orders. But if your

1 preference is simply to wait for a dispute to develop and  
2 then have it heard before you by stipulation, if possible,  
3 then that's acceptable with Oracle as well.

4 THE COURT: Mr. Hixson, I wish I could keep in  
5 my brain everything that has happened in just one case, let  
6 alone -- but I have to tell you, the nuances of the rulings  
7 and the hundreds of pages of transcript probably of those  
8 two hearings, I do not have laser-like precision and focus  
9 on what was before me then and what I told you.

10 I am going to compel you to produce the  
11 CedarCrestone settlement agreement. I am not inclined at  
12 all to compel settlement negotiations absent a much higher  
13 threshold showing by Rimini in this case that they haven't  
14 made.

15 I have read the *ResQNet* case and the *Astrazeneca*  
16 case. And I do regard this as a -- this case -- the  
17 damages that are allowed in copyright infringement case as  
18 the -- I was particularly amused by the description of the  
19 judge being more conjurer than judge-like in arriving at a  
20 hypothetical, not speculating but still hypothesizing.

21 This is a very difficult area of the law and an  
22 area in which -- as you know in your first Oracle case, the  
23 jury awarded zero damages for lost profits. And the only  
24 alternative to a lost profits damages analysis is a  
25 hypothetical reasonable royalty.

1           MR. HIXSON: Your Honor, I just -- Rimini's  
2 talking point is that there were zero dollars in lost  
3 profits. There were \$14 million. So every time they say  
4 zero, I think, no, it was 14 million.

5           THE COURT: You got damages --

6           MR. HIXSON: Yeah.

7           THE COURT: -- for various categories of things.

8           MR. HIXSON: Yeah.

9           THE COURT: And the point is I regard this as  
10 discoverable. And whether or not it's admissible, I think  
11 you may have the upper hand on that for all of the reasons  
12 you state in your joint status report, that -- the  
13 litigation value of it, the fact that CedarCrestone stopped  
14 infringing before -- long before and for many other good  
15 policy reasons.

16           But since there are -- there's very little  
17 information on which to base causation and damages in a  
18 unique area like this. And so I'm going to allow the  
19 discovery of the settlement agreement itself subject to the  
20 protective order.

21           I'm going to deny your motion for protective  
22 order and require Rimini to negotiate with the two  
23 recipients of the subpoena duces tecum to narrow the  
24 subpoenas and determine whether the recipients of the  
25 subpoenas wish to contest.

1           You also have served subpoenas on 248 of their  
2 clients asking for broad discovery of information. And at  
3 this discovery stage I'm inclined to allow them more  
4 targeted discovery than was before me in the very, very  
5 broad discovery request.

6           I agreed with you with respect to the customer  
7 issues, but the context of those discovery requests, as I  
8 recall, they wanted every agreement that you ever made, any  
9 licensing agreement with any customer, whether they were  
10 involved in this line of business or not.

11           And those were simply extraordinarily overbroad,  
12 and there was no way I was going to compel you to produce  
13 that breadth of information.

14           But these two subpoenas duces tecum are much  
15 more narrow. And I do agree they ought to be focused on  
16 obtaining customer information pertinent to this case and  
17 product lines pertinent to this case.

18           However, as they are exploring from Spinnaker,  
19 whether Spinnaker -- what Spinnaker does is noninfringing  
20 alternative to the services you provide. They're entitled  
21 to some latitude there.

22           MR. HIXSON: Understood, Your Honor.

23           THE COURT: Okay. Let's set a date for our next  
24 status and dispute resolution conference.

25           And at the next conference I expect the parties

1 to submit an updated discovery plan and scheduling order.

2 And I do expect that Rimini will have made  
3 substantial progress towards getting the rest of this  
4 discovery to Oracle that's been outstanding for months and  
5 months and months now.

6 As I said, the time -- the time clock is running  
7 on this case.

8 So, Mr. Miller, what do we have in approximately  
9 30 days?

10 COURTROOM ADMINISTRATOR: Well, Your Honor, in  
11 approximately 30 days we can reschedule this matter for  
12 Tuesday, May the 10th, 2016, at 9:00 a.m. in this  
13 courtroom.

14 THE COURT: Do you want to consult your various  
15 devices?

16 And we'll go off record and see if that works  
17 for you all.

18 (Discussion held off the record from  
19 10:20 a.m. until 10:21 a.m.)

20 THE COURT: As I said, I do want a proposed  
21 schedule to get this ready for trial.

22 MR. HIXSON: On that --

23 THE COURT: A meaningful one.

24 MR. HIXSON: -- Your Honor, I do have a  
25 question.

1           My colleague has pointed out that a couple of  
2           the dates in the existing schedule expire within a week or  
3           two after the May status conference. The current last day  
4           to amend pleadings and add parties is May 16th. And then  
5           the last date to file interim status report is May 30. We  
6           would ask --

7           THE COURT: Mr. Miller, are we back on the  
8           record?

9           COURTROOM ADMINISTRATOR: We are now back on the  
10          record.

11          THE COURT: Okay. I just wanted to make sure  
12          you're getting this on the record.

13          Go ahead.

14          MR. HIXSON: Okay. And so with respect to the  
15          May 16th and May 30 deadlines in the current case schedule,  
16          I understand that the next one of those are likely to be  
17          kicked, we would appreciate it if the Court could at least  
18          extend those by 30 days as of today so we don't worry that  
19          we have a deadline less than a week --

20          THE COURT: Correct. There's no reason to --  
21          I'm not going to enforce that deadline. I've been telling  
22          you that I'll enter a schedule once I have a much better  
23          handle on how close or far away we are to completing the  
24          discovery that you need from Rimini.

25          And so, no, you're not going to be held to those

1 deadlines, and they'll be extended a minimum of 30 days.

2 MR. HIXSON: All right. Thank you.

3 THE COURT: Okay. We'll see you back then,  
4 gentlemen. Thank you.

5 COURTROOM ADMINISTRATOR: All rise.

6 (The proceedings concluded at 10:22 a.m.)

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I certify that the foregoing is a correct  
transcript from the electronic sound recording  
of the proceedings in the above-entitled matter.



4/7/16

Donna Davidson

Date